

August 15, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1282

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2008-11-14 35

UNITED STATES
DISTRICT COURT

In Regard to the Matter of:

Bayside State Prison

Litigation

OPINION/REPORT

OF THE

ARNETT THOMAS,

SPECIAL MASTER

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, AUGUST 15, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

August 15, 2008

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

6

Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 9:52 AM.

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MASTROIANNI & FORMAROLI, INC.

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Certified Court Reporting & Videoconferencing

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251 South White Horse Pike

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Audubon, New Jersey 08106

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856-546-1100

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A P P E A R A N C E S:

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LOUGHRY & LINDSAY, ESQUIRES

4

BY: JUSTIN LOUGHRY, ESQUIRE

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856-968-9201

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ATTORNEYS FOR THE PLAINTIFFS

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ROSELLI & GRIEGEL, PC

BY: MARK ROSELLI, ESQUIRE

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- and -

BY: KENNETH LOZIER, ESQUIRE

10

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HAMILTON SQUARE, NEW JERSEY 08690

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609-586-2257

ATTORNEYS FOR THE DEFENDANTS

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1 JUDGE BISSELL: I'm reopening
2 proceedings in the case of Arnett Thomas, number
3 08-1282.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Thomas.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Thomas testified about two
18 incidents that occurred to him in B Unit. The first
19 one occurred as a result of his having taken some
20 notes and being observed doing so while he was there.
21 The officers detected that, came into his cell,
22 forced him to the floor, put a knee in his back, told
23 him to shut up and confiscated his notes, ripped them
24 up. He said there was no injury resulting from this.

25 After that he stated that shortly

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1 thereafter, and we now know that it took place
2 approximately on August 1st, he was to be transferred
3 out. He was backed out of his cell, he said they
4 throw his glasses on the ground, stepped on them and
5 broke them.

6 I might add parenthetically that we're
7 not dealing here with property damage claims as such
8 and accordingly I don't find that as any basis for
9 liability here.

10 He was then told to put his clothes
11 back on, and he was put in handcuffs. He felt that
12 the cuffs were too tight and, in fact, raised visual
13 evidence of that at the time that they were
14 ultimately taken off.

15 He testified that he was cuffed behind
16 his back and the stick was put into his back for the
17 purpose of having him bent over while he was
18 transferred out to the location in which he would be
19 removed to another institution. He was headed for
20 Southwoods. He did not resist. He claims that he
21 incurred a tear in his lower back as a result of
22 being placed in this position and transported in this
23 fashion. He later was admitted to Southwoods after
24 the trip from Bayside.

25 Plaintiff also indicated that his right

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1 thumb was permanently injured as a result of the
2 tightness of the handcuffs, among other things, a
3 numbing sensation in that thumb.

4 The analysis of the evidence, however,
5 does not indicate any actionable conduct here.

6 The method of movement of this man in
7 the manner described with the hands behind the back
8 and the baton under the arms in order to put this
9 person in a particular position in which he would be
10 of no threat to those who were transporting him, the
11 master does not find that that constitutes the use of
12 excessive force as defined in the jury charges that I
13 have mentioned. In fact, I find that it is a
14 necessary and acceptable technique for this type of
15 movement.

16 I also note that this did, in fact,
17 occur on August 1st, a mere two days after the
18 assault on Officer Baker when a need for maximizing
19 security in connection with the transport of inmates
20 was important.

21 As far as the tightness of the
22 handcuffs are concerned, while that may be the case
23 and whether or not that would support a tort claim
24 under state law is, once again, not before me. I do
25 not find that that constitutes the imposition of

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1 excessive force, any intention to inflict pain or
2 sadistic.

3 One would not expect, particularly in a
4 short transport like this, for the guards to respond
5 to every complaint about the tightness of handcuffs.
6 The proofs fail in that respect.

7 I note also, based on the medical
8 records and his cross-examination, that continuing
9 complaints of any permanency all related to his left
10 thumb rather than his right thumb. And while if this
11 happened only once or twice, one might ascribe that
12 to either a misunderstanding in communicating with
13 medical personnel or otherwise, but it is recurrent
14 and repeated. To some extent at least that impacts
15 the credibility of his testimony with regard to any
16 permanent injury to his right thumb.

17 As far as back pain is concerned, from
18 the medical records presented here and from my review
19 thereof, the first reference to any back pain occurs
20 in a medical note while he was at Southwoods dated
21 November 5, 1997, more than three months after the
22 incident in question. At least as the complaint is
23 characterized by the intake nurse who would have no
24 reason to be inaccurate, the inmate complained of
25 lower back pain, hurt at work in the kitchen picking

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1 up and taking out garbage. It does mention it was a
2 chronic problem, but there are no amplifications of
3 that.

4 Also noted, he has not received his
5 bottom bunk assignment. I think it's a fair
6 inference that the bottom bunk is a preferred
7 location and perhaps this was a ploy to secure that
8 status.

9 There are other entries in and around
10 November 5th and the subsequent dates regarding the
11 situation with regard to his back. However, the fact
12 that this complaint only arises, as I said, some
13 three months after the incident in a location removed
14 some 45 to 60 minutes as he testified as far as the
15 bus trip is concerned from Bayside, further in my
16 view argues against the accuracy and the credibility
17 of any claim of having his back injured in the course
18 of his transport within the compound at Bayside.

19 Accordingly, I find that the plaintiff
20 has not sustained his claim here, first, that the
21 injury occurred at all and, secondly, that the
22 activities ascribed to the guards constitute the
23 imposition of excessive force.

24 Finally, although not every item of
25 evidence has been discussed in this opinion/report,

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1 all evidence presented to the Special Master was
2 reviewed and considered.

3 For the reasons set forth above, I
4 recommend in this report that the district court
5 enter an order and judgment of no cause of action
6 with regard to Arnett Thomas.

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1 CERTIFICATE

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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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Theresa O. Mastroianni, C.S.R.

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Notary Public, State of New Jersey

My Commission Expires May 5, 2010

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Certificate No. X10857

Date: August 26, 2008

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